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that his covenant is dependent, but that there has been a constructive eviction. Where, as in the principal case, one room in a building is let, the principles of ordinary bilateral contracts might well be applied, since the lessee gets no estate in the land. See *Shawmut National Bank v. Boston*, 118 Mass. 125. But even in such cases the extension in the law would seem too radical to be made without the aid of a statute. But see *Delmar Investment Co. v. Blumenfield*, 118 Mo. App. 308, 322, 94 S. W. 823, 828. Cf. *Chicago Legal News Co. v. Browne*, 103 Ill. 317.

MANDAMUS — ACTS SUBJECT TO MANDAMUS — COMPELLING CITY OFFICIALS TO SUBMIT ALLEGED UNCONSTITUTIONAL ORDINANCE TO POPULAR VOTE. — A statute provided that the board of city commissioners should submit to popular vote any measure proposed by a certain percentage of the qualified voters. The commissioners refused to hold such an election, on the ground that the proposed measure would be unconstitutional. *Held*, that mandamus will issue against them. *State ex rel. Foote v. Board of Commissioners*, 144 Pac. 241 (Kan.).

The court objects that the constitutionality of the proposed ordinance is a purely moot question. It is true that the courts so far hesitate to pass upon the constitutionality of legislative acts that they allow the point to be raised only by one whose rights are threatened. *Sinclair v. Jackson*, 8 Cow. (N. Y.) 543, 579. Moreover, courts will ordinarily refuse to restrain the legislative function of passing municipal ordinances, however unconstitutional they appear to be. *New Orleans Water Works Co. v. New Orleans*, 164 U. S. 471; *Stevens v. St. Mary's Training School*, 144 Ill. 336, 32 N. E. 962. In the ordinary case, where the mere passing of the ordinance involves no injury or expense, adequate relief is secured by refusing to enforce it when asserted. In the principal case, however, to submit the ordinance to popular vote would involve a large expenditure of public money. Moreover, equity could effectively prevent the expense by a decree against the commissioners, giving relief by analogy to its well-established jurisdiction to enjoin the waste of public funds at the suit of a taxpayer. See *Solomon v. Fleming*, 34 Neb. 40; *Elliott v. Detroit*, 121 Mich. 611, 84 N. W. 820; 28 HARV. L. REV. 300. Such considerations might well justify the court in refusing mandamus, where the invalidity of the proposed ordinance, if passed, would be undoubted; but they lose their force where, as in the principal case, the constitutionality of the ordinance was not seriously questioned.

MASTER AND SERVANT — WORKMAN'S COMPENSATION ACTS — EFFECT OF ILLEGALITY OF CONTRACT OF EMPLOYMENT. — In an action under the Workman's Compensation Act for injuries received by an employee in the course of his employment, it appeared that the plaintiff's wages were to have been paid in food and drink, in violation of the Truck Acts, 1 & 2 Wm. IV, c. 37, 50 & 51 Vict., c. 46. *Held*, that the plaintiff cannot recover compensation. *Kemp v. Lewis*, 111 L. T. R. 699 (C. A.).

The case is one of first impression and its result seems questionable, if the relation of master and servant in fact existed. At common law, each party is subject to the incidents of the relation, although bound by no enforceable contract. Thus an infant whose contract is voidable may be barred by assumption of the risk. *Houston & G. N. R. Co. v. Miller*, 51 Tex. 270. Likewise an employer, who has the right to avoid the contract because of the employee's fraudulent misrepresentation, may still be liable for the violation of a relational duty resulting in injury to the employee. *Galveston, H. & S. A. Ry. Co. v. Harris*, 48 Tex. Civ. App. 434, 107 S. W. 108; *Lupher v. Atchison, T. & S. F. R. Co.*, 81 Kan. 585, 106 Pac. 284. *Contra*, *Norfolk & Western Ry. Co. v. Bondurant's Adm'r*, 107 Va. 515, 59 S. E. 1091. Doubtless a contract to